

HUMAN SERVICES BOARD

In re) Fair Hearing No. N-09/09-498
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 Appeal of)

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division, Health Access Eligibility Unit (HEAU) terminating her VHAP benefits and not retroactively reinstating her coverage following the petitioner's failure to pay her premium in a timely manner. The issue is whether the regulations allow retroactive reinstatement of benefits.

The following findings are based on the representations of the parties in a telephone conference held on November 13, 2009 and in related documents subsequently filed by the Department.

1. In August 2009 the petitioner was enrolled in VHAP, subject to the payment of a monthly premium based on her income. The Department sent the petitioner monthly bills, which the petitioner paid by check.

2. In July 2009 the Department sent the petitioner a bill for her premium which was noticed to be due by August 15, 2009.

3. On August 20, 2009 the Department sent the petitioner a notice closing her VHAP effective August 31, 2009 because her premium had not been paid. The notice advised the petitioner that her coverage would continue "if we receive and process your payment before coverage ends".

4. The petitioner alleges that she mailed her premium to the Department on August 29, a Saturday.

5. On September 1, 2009 the petitioner underwent a pre-scheduled non-emergency outpatient procedure at a clinic. When she arrived at the clinic that day the clinic advised her that its system was showing that the petitioner was not covered by VHAP. The petitioner elected to have the procedure anyway, and paid the clinic \$298 by personal check.

6. The petitioner then called the Department and was advised that her VHAP had been terminated due to the fact that the Department had not received and processed her premium payment until September 3, 2009. On September 10, 2009 the Department sent the petitioner a notice finding her eligible for VHAP effective October 1, 2009 and for the Healthy Vermonsters Program effective September 10, 2009.

7. The petitioner is now seeking reimbursement for the clinic services she received on September 1, 2009. The petitioner maintains that the Department "should have" gotten her premium check on August 31, 2009, which was the Monday after the Saturday she says she mailed it. However, even if the petitioner mailed her premium on that Saturday, there is no factual or legal basis to find that the Department in fact, or should have, received it the following Monday.

ORDER

The Department's decision terminating the petitioner's VHAP coverage as of August 31, 2009 and not granting the petitioner retroactive coverage for September 2009 is affirmed.

REASONS

Based on a legislative directive (Act 66 of 2003) to enact cost-savings measures designed to sustain the public health care assistance programs, the Department has adopted regulations establishing monthly "premiums" to be paid prospectively by VHAP. The regulations require that coverage shall be terminated if an individual does not pay the required program fee by the billing deadline. See W.A.M. § 4111. In this case it must be found that the petitioner did

not pay her required program fee by the August 31, 2008 deadline and that she was duly and timely notified by the Department (and immediately thereafter by the clinic where she received services on September 1) of the closure of her benefits as of that date.

There is no dispute that the Department reinstated her coverage effective the first day of the month (October 1) following the date it received her premium payment (September 3). This was fully in accord with the program regulations at § 4121. Unfortunately, there are no provisions in the regulations for retroactive reinstatement of coverage upon receipt of a late premium payment. Inasmuch as the Department's decisions in this matter were in accord with the pertinent regulations the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule 1000.4D.

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